

URGENT FOR COMMENTS FROM  
THE JAGORI GROUP L-25

The BJP has announced a Uniform Civil Code as one of its top priorities. Having demonstrated its concern for Muslim interests by demolishing the Babri Masjid, the Sangh Parivar has now turned to the evils of Muslim Personal Law. It has pledged to end the sufferings of Muslim women and to outlaw triple talaq and polygamy by enacting a Uniform Civil Code. In response the self-styled "leaders" of the Muslim community have declared any attempt to improve the conditions of Muslim women to be a threat to Islam itself.

As always in this tug-of-war between communal interests, the real issue gets lost. And the real issue is the rights of women. If the BJP and Sangh Parivar is so concerned about the status of women, why does it remain silent about the gross inequalities in the Hindu law? The fact is that every personal law of every community is unjust to women.

#### Hindu Personal Law

Q. But hasn't the Hindu Personal Law been reformed, unlike the personal laws of other communities?

A. This is not true. The Hindu Personal Law was only codified through four Acts in 1955 and 1956. Codification means bringing together under one legal code. In other words, these four Acts were not concerned with ending injustices to women in Hindu laws. Their only purpose was to end variations in different parts of the country due to people following different customary practices. By these Acts, uniform laws were imposed on all people defined as "Hindu". For the first time, the meaning of "Hindu" was fixed as all those who are not Muslim, Christian or Parsi.

Q. Doesn't uniformity at least end the injustices brought about by the existence of many laws?

A. No, on the contrary, these Acts imposed uniformity by depriving women of many rights they had under customary practices. Sometimes, other existing laws gave women better rights, but the Hindu Code Bills ended them as well.

#### Example 1

Some communities of Kerala and Karnataka followed matrilinal succession. That is, property was inherited by the daughters from the mothers. By the new Acts, patrilineal succession was imposed on all such communities as well. So women lost the right to inherit.

#### Example 2

Under the existing law on the guardianship of children, which was valid for all communities, whoever actually looked after the child or children (i.e. the de facto guardian) was recognized by the law.

The new Act changed this for Hindus only. Now the father was recognized as the "natural guardian", and mothers, even if they had done all the work of looking after the child, had only second claim.

Thus the "reformed" Hindu law in fact, took away rights that women

already had, and left them with unequal rights in every sphere.

#### Property

Women cannot inherit ancestral property at birth as their brothers can.

After the father's death they can inherit an equal share of his self-earned wealth, BUT here too, the new Acts introduced a feature which did not exist before, and the purpose of which was to disadvantage women. This feature is the right to make a will, leaving self-earned property to whomsoever one wishes. This provision was meant to allow fathers to leave all their property to their sons, disinheriting daughters. And in practice, this is what has been found to happen. Some fathers may use the provision to leave all their property to their daughters, but this is very very rare - ask any lawyer!

#### Marriage

Bigamy is not permitted. However, only one form of marriage is recognized by the new Code as valid. That is, the saptapadi, or seven steps around the fire. So Hindu men marry more than once, but they take care to follow some other form of marriage rite. Then, if the first wife goes to court, the judges hold the later marriage as invalid, and the man escapes the charge of bigamy. In this way he has no responsibility to either woman.

Hindu men do not need to convert to Islam to marry more than once, as the BJP tries to make us believe. In fact, census figures show that bigamy is higher among Hindus.

Of course, all other personal laws too, discriminate against women.

#### Muslim Personal Law

- Permits polygamy and arbitrary divorce
- Divorced Muslim women have no right to maintenance from their husbands *less than*
- Women have ~~only~~ half the inheritance rights of men.

#### Christian Personal Law

- Grounds of divorce are easier for men than for women. That is, men can end their marriages on merely the ground of adultery, while women cannot divorce for adultery alone. They have to produce some other reason as well.
- Women have no maintenance rights on divorce.
- Women have unequal inheritance rights.

Q. The BJP does not want to impose the Hindu Code on everyone. In fact, Advani has said that the best of all the personal laws must be put together to create a new code.

A. Firstly, the BJP has several voices and several faces, and we are left wondering which is the "real" one. While Advani makes moderate statements, other BJP members like Uma Bharati and Sadhvi Ritambhara openly spew poison on minorities.



Secondly, we have just looked at the major personal laws and their open bias against women. Even the "best" of these laws are unfair to women. It is simply not enough to work within the parameters set by existing personal laws.

Q. Only the BJP seems to have some concrete idea of a Uniform Civil Code. Is any other alternative being proposed?

A. The BJP's idea is clearly designed to attack the minority communities, particularly Muslims. It shows no interest in women's rights.

The women's movement has been raising this issue ever since Independence, but its voice has been drowned in the communal din on all sides. This time, women are determined to be heard. Women's groups from all over the country have come together to chalk out a common 3-point programme:

1. Support struggles of democratic forces within the communities for reform of Personal Laws. Christian women have already worked out a more egalitarian code, which they have persuaded all the Churches in India to agree to. Now it is held up by the government, which refuses to table the Bill in Parliament.

When the Congress government overturned the Supreme Court judgement giving maintenance to Shah Bano in 1986, the excuse it used was that "the Muslim community" desired this. It ignored the thousands of ordinary Muslims who petitioned the government not to pass the controversial Muslim Women's Bill which deprived Muslim women of maintenance rights. Now that even the Churches have been persuaded to listen to the community's desire for change, why does the government hesitate? Does it recognize only communal and patriarchal voices as the "voice of the community"?

Muslim women too, have framed a model nikahnama which is more equitable to women, and this has been accepted in a modified form by the Muslim Personal Law Board.

The women's movement recognizes the need to win back the ground inside the communities from male, patriarchal interests.

2. Legislation is required on matters like domestic violence, and women's right to the matrimonial home. At present, women can be assaulted by their husbands and thrown onto the roads, with no law to help them. The women's movement points out that since these issues are not covered by personal laws, they can be immediately covered by legislation, without the red herring of religion being dragged in.

3. Formulating a fair and equitable common code which will give women justice in matters of marriage, divorce, inheritance and guardianship of children. Several versions of such a code have been worked out by different groups, and the process of finalising this has begun. Then this code can be transformed into law in stages, or

it can in its entirety be established as an option for those who wish to be governed by it.

These are matters for a public and democratic debate. Let us not allow the BJP to hijack this issue for its narrow, sectarian and anti-democratic ends.